

AMENDED IN ASSEMBLY JULY 8, 2003

AMENDED IN SENATE MARCH 27, 2003

**SENATE BILL**

**No. 131**

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**Introduced by Senator Sher**  
(Coauthor: Assembly Member Koretz)

February 5, 2003

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An act to amend Section 11357 of the Health and Safety Code, *and to amend Section 23222 of the Vehicle Code*, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 131, as amended, Sher. Marijuana: possession: penalty.

Existing law provides that, except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor, punishable by a fine of not more than \$100, and if that person has been previously convicted 3 or more times of that offense during the previous 2 years and has been found guilty of the current offense after a trial, or has admitted guilt, the person is eligible for diversion, as specified.

This bill would instead provide that (a) except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is, for the first offense, guilty of an infraction, punishable by a fine not to exceed \$100, and is, for the 2nd or any subsequent offense, guilty of an infraction or a misdemeanor, punishable by a fine not to exceed \$100; and (b) if that person has been previously convicted 2 or more times of that offense during the previous 2 years, the person is eligible for diversion, as specified. *The bill would make conforming changes to related provisions.* To the extent that this

bill would increase the duties of local officers by providing for the diversion of offenders after a 2nd rather than 3rd offense, this bill would impose a state-mandated local program upon local governments.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11357 of the Health and Safety Code is  
2 amended to read:

3 11357. (a) Except as authorized by law, every person who  
4 possesses any concentrated cannabis shall be punished by  
5 imprisonment in the county jail for a period of not more than one  
6 year or by a fine of not more than five hundred dollars (\$500), or  
7 by both that fine and imprisonment, or shall be punished by  
8 imprisonment in the state prison.

9 (b) (1) Except as authorized by law, every person who  
10 possesses not more than 28.5 grams of marijuana, other than  
11 concentrated cannabis, is, for the first offense, guilty of an  
12 infraction punishable by a fine not to exceed one hundred dollars  
13 (\$100), and is, for the second or any subsequent offense, guilty of  
14 an infraction or a misdemeanor punishable by a fine not to exceed  
15 one hundred dollars (\$100).

16 (2) Notwithstanding other provisions of law, if that person has  
17 been previously convicted two or more times of an offense  
18 described in this subdivision during the two-year period  
19 immediately preceding the date of commission of the violation to  
20 be charged, the previous convictions shall also be charged in the  
21 accusatory pleading. If the defendant is charged with a



misdemeanor, the provisions of Sections 1000 to 1000.5, inclusive, of the Penal Code shall apply to the matter. In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, the person shall be released by the arresting officer upon presenting satisfactory evidence of identity and giving a written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both that fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in the county jail for a period of not more than 10 days, or both.

(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be subject to the following dispositions:

(1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

SEC. 2. *Section 23222 of the Vehicle Code is amended to read:*

23222. (a) No person shall have in his or her possession on his or her person, while driving a motor vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, any

1 bottle, can, or other receptacle, containing any alcoholic beverage  
2 which has been opened, or a seal broken, or the contents of which  
3 have been partially removed.

4 (b) (1) Except as authorized by law, every person who  
5 possesses, while driving a motor vehicle upon a highway or on  
6 lands, as described in subdivision (b) of Section 23220, not more  
7 than ~~one avoirdupois ounce~~ 28.5 grams of marijuana, other than  
8 concentrated cannabis as defined by Section 11006.5 of the Health  
9 and Safety Code, is, *for a first offense*, guilty of a ~~misdemeanor~~  
10 ~~and shall be punished an infraction punishable~~ by a fine of not  
11 more than one hundred dollars (\$100), *and is, for the second or*  
12 *any subsequent offense, guilty of an infraction or a misdemeanor*  
13 *punishable by a fine of not more than one hundred dollars (\$100).*  
14 ~~Notwithstanding~~

15 (2) *Notwithstanding* any other provision of law, if the person  
16 has been previously convicted ~~three~~ two or more times of an  
17 offense described in this subdivision during the two-year period  
18 immediately preceding the date of commission of the violation to  
19 be charged, the previous convictions shall also be charged in the  
20 accusatory pleading ~~and, if found to be true by the jury upon a jury~~  
21 ~~trial or by the court upon a court trial or if admitted by the person,~~  
22 ~~Sections 1000.1 and 1000.2 of the Penal Code are applicable to the~~  
23 ~~person, and the court shall divert and refer the person for~~  
24 ~~education, treatment, or rehabilitation, without a court hearing or~~  
25 ~~determination or the concurrence of the district attorney, to an~~  
26 ~~appropriate community program which will accept the person. If~~  
27 ~~the person is so diverted and referred, the person is not subject to~~  
28 ~~the fine specified in this subdivision. In~~

29 (3) *If the defendant is charged with a misdemeanor, the*  
30 *provisions of Sections 1000 to 1000.5, inclusive, of the Penal Code*  
31 *shall apply to the matter.*

32 (4) *In any case in which a person is arrested for a violation of*  
33 *this subdivision and does not demand to be taken before a*  
34 *magistrate, the person shall be released by the arresting officer*  
35 *upon presentation of satisfactory evidence of identity and giving*  
36 *his or her written promise to appear in court, as provided in Section*  
37 *40500, and shall not be subjected to booking.*

38 SEC. 3. Notwithstanding Section 17610 of the Government  
39 Code, if the Commission on State Mandates determines that this  
40 act contains costs mandated by the state, reimbursement to local

1 agencies and school districts for those costs shall be made pursuant  
2 to Part 7 (commencing with Section 17500) of Division 4 of Title  
3 2 of the Government Code. If the statewide cost of the claim for  
4 reimbursement does not exceed one million dollars (\$1,000,000),  
5 reimbursement shall be made from the State Mandates Claims  
6 Fund.

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